ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	CC Docket No. 98-121
BellSouth Long Distance, Inc. for Provisions	)	
of In-Region, InterLATA Services	)	
In Louisiana	)	

AT&T CORP. REPLY TO OPPOSITIONS AND COMMENTS

In accordance with the Commission's Public Notice issued November 19, 1998, Report No. 2307, and published in the Federal Register on November 30, 1998, AT&T Corp. ("AT&T") hereby replies to the oppositions and "comments" filed by Ameritech, Bell Atlantic, and BellSouth in response to AT&T's petition for reconsideration and/or clarification of the Commission's Memorandum Opinion and Order ("Order") in the above-entitled proceeding.

Predictably, BellSouth ignores the serious issues raised in AT&T's petition. Reduced to its essence, BellSouth's position is that it should not be required to do anything that might delay its provision of long distance service, regardless of whether such action is required by the plain language of the Act, the Commission's rules, or judicial precedent. Ameritech uses this proceeding to raise again its tired argument, which the Commission rejected over two years ago, that purchasers of unbundled network elements are not entitled to be the sole providers of exchange access and local termination over those facilities. Finally, Bell Atlantic echoes the same faulty arguments raised by BellSouth. None of these commenters has rebutted AT&T's showing that certain portions

of the Order require reconsideration and/or clarification. For these reasons, AT&T's petition should be granted.[1]

I. THE ACT REQUIRES THAT PURCHASERS OF UNBUNDLED NETWORK ELEMENTS BE PERMITTED TO USE SUCH ELEMENTS TO PROVIDE EXCHANGE ACCESS.

In its petition, AT&T demonstrated that the Act requires that purchasers of unbundled network elements be permitted to provide exchange access, including intrastate exchange access, and that, as a necessary corollary of this requirement, the Act precludes incumbent LECs from imposing access charges upon purchasers of unbundled network elements. AT&T further cited to binding Commission rules and court decisions that uphold this requirement of the Act.

BellSouth does not even attempt to address the language of the Act, these binding Commission rules, or controlling court decisions. Instead, it chooses to hide behind its predictable "pricing" mantra, arguing that because the Commission does not have the authority to regulate intrastate access, it cannot consider whether a state commission action precludes a new entrant from offering a service using unbundled elements. According to BellSouth, if – under any conceivable argument – an issue can be labeled pricing, the Commission may not consider whether a BOC is meeting its other

---

[1] By contrast, the comments filed by the Competitive Telecommunications Association, KMC Telecom, MCI WorldCom, and Sprint – as well as the opposition filed by AT&T – make clear that BellSouth's petition for reconsideration and clarification should be denied.

commitments under the Act.[2] This has never been the law. As the 8th Circuit specifically acknowledged, the Act grants explicit authority to the Commission – and not to the states – to prescribe rules governing the availability and use of unbundled network elements.[3]

For its part, Ameritech contends that the Commission must abandon one of the underlying premises of the Act and the Commission's First Order on Reconsideration[4] – *i.e.*, that the purchaser of unbundled local switching has the "exclusive right" to provide all features, functions and capabilities of the switch. Ameritech raises the same tired argument that the Commission has repeatedly rejected. The Commission should again reject this bid by Ameritech to protect its access war chest and to forestall incipient competition. Such rejection is especially appropriate, because Ameritech perceives a "problem" requiring solution that does not exist in reality, but arises solely through Ameritech's faulty analysis of the Commission's orders.

Ameritech's argument is based on a perceived inconsistency between the First Order on Reconsideration and the manner in which CLECs and IXCs "use" local switching. In order to support its argument, Ameritech constructs an imaginary claim by

---

2 Thus, under BellSouth's theory, if a state commission ordered that purchasers of unbundled loops remit to BellSouth all revenues received from the CLEC's customers for services provided using those loops, this would be a pricing decision immune from Commission consideration when the Commission attempted to determine whether BellSouth was providing unbundled loops in compliance with the Act.

3 Iowa Utils. Bd. v. FCC, 120 F.3d 753, 794 and n.10, cert. granted sub nom., AT&T Corp. v. Iowa Utils. Bd., 118 S.Ct. 879 (1998). See Southwestern Bell Telephone Co. v. FCC, 153 F.3d 523, 540-41 (8th Cir. 1998).

4 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration, 11 FCC Rcd 13042 (1996) ("First Order on Reconsideration").

AT&T that the purchaser of unbundled local switching is entitled to "exclusive use" of the local switch. Yet, this language does not appear in AT&T's petition or the Commission's First Order on Reconsideration. Instead, as the Commission made clear, the purchaser of unbundled local switching to serve an end user "obtains the ***exclusive right*** to provide all features, functions and capabilities of the switch . . . ***for that end user.***" First Order on Reconsideration, ¶ 11 (emphasis added).

"Exclusive use" and "exclusive right to provide" plainly do not have the same meaning. For example, when an interexchange carrier originates a call from, or terminates a call to, an end user it obtains access services from the local provider, and thereby "uses" the local switch. However, it is precisely because the CLEC has the "exclusive right" to provide all features, functions, and capabilities of the unbundled switch that it is the provider of exchange access for that end user, and therefore is entitled to bill the IXC originating and terminating access charges to compensate the CLEC for the IXC's "use" of the CLEC's switching. The Commission thus rightly held that when a CLEC purchases an unbundled local switching element to serve its customer, that CLEC is the only carrier serving that customer for local exchange service, for exchange access service, and for local transport and termination (which creates the right to receive reciprocal compensation).

Ameritech real aim – to protect its access war chest – is evidenced by its proposal that interexchange carriers be permitted to choose to purchase access directly from the underlying incumbent LEC rather than the CLEC providing exchange access service via unbundled local switching. Aside from the obvious procedural issues raised by Ameritech's attempt to create such a rule – the lack of notice, the fact that it was not

raised in BellSouth's 271 application, the lack of briefing by any of the parties in the proceeding – Ameritech ignores the fact that such a result would violate the plain language of the Act, Commission rulings upheld by the 8th Circuit, and federal district court decisions. The Commission should summarily reject this bald attempt to subvert the Act's intent and destroy incipient exchange access competition.

II. A BOC MUST PERMIT NEW ENTRANTS TO INCORPORATE ITS CHECKLIST COMMITMENTS INTO INTERCONNECTION AGREEMENTS.

In its petition, AT&T demonstrated that a BOC must make available to new entrants in their interconnection agreements the services and functions the BOC relies upon to establish compliance with the competitive checklist. In response, BellSouth sidesteps its continued refusal to commit to provide checklist items to CLECs in interconnection agreements by raising strawman arguments that have no applicability in this proceeding. For example, BellSouth resurrects its refrain that CLECs might refuse to request such checklist items in order to prevent BellSouth from re-entering the long distance market as soon as BellSouth feels is convenient. BellSouth ignores the fact that the very issue before the Commission arises from BellSouth's refusal to provide these checklist necessities except through ambiguously worded and insufficiently detailed SGAT provisions. Moreover, the real delay here has been BellSouth's delay in opening its local markets to competition by its ongoing refusal to provide the services and functionalities mandated by the Act and the Commission's orders until such time as BellSouth feels such compliance meets its business and policy goals.

III. THE NONDISCRIMINATION REQUIREMENTS OF SECTION 272 REQUIRE THAT TRANSACTIONS BETWEEN THE 272 AFFILIATE AND OTHER AFFILIATES BE DISCLOSED IN CERTAIN CIRCUMSTANCES.

In its opposition, BellSouth argues that "there is no need for BellSouth to disclose transactions between BSLD and other non-BOC affiliates," because (1) BellSouth has not transferred to any affiliate any network facilities that are required to be unbundled, and (2) no "chain transactions" exist. BellSouth thus agrees with AT&T that it must disclose transactions with its non-272 affiliates if those two situations exist.[5] The Commission therefore should clarify the Order as requested by AT&T.[6]

IV. THE COMMISSION PROPERLY APPLIED THE CHECKLIST REQUIREMENTS TO BELLSOUTH'S OSS.

A. Average Installation Intervals

BellSouth's contention that average installation data should not be considered in connection with a 271 application flies in the face of numerous Commission decisions as well as requirements of the Louisiana PSC. MCI WorldCom Opp. at 5.[7] As the oppositions of MCI WorldCom and Sprint further emphasize, the Commission has made

---

[5] Contrary to Bell Atlantic's contention (p. 10 n.9), BOCs are required to comply with the disclosure requirements of § 272(b)(5) as of the date of the Act's enactment, *i.e.*, as of February 8, 1996. Order, ¶ 334; Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd. 20543, 20736, ¶ 371 (1997).

[6] The MCI/WorldCom (pp. 13-14) and Sprint (pp. 13-16) oppositions make clear that BellSouth's attempt to avoid its disclosure requirements under Section 272(b)(5) should be rejected.

[7] See also KMC Opposition at 4-5.

clear that a BOC may demonstrate in its 271 application that any disparity in provisioning intervals is the result of factors other than discrimination by the BOC. Id. at 6; Sprint Opp. at 11. BellSouth's requested clarification therefore should be denied.

B. Flow-Through Measurements and Complex Services.

MCI WorldCom's opposition further demonstrates that BellSouth's objection to providing flow-through data for "complex services" should be rejected. As MCI WorldCom points out (p. 6), BellSouth seeks to exclude not only complex orders that CLECs must place manually, but also the four types of "complex" orders that BellSouth allows CLECs to place via EDI. Moreover, to the extent that BellSouth real complaint is that inclusion of different order types in overall flow-through statistics may not give a realistic picture of its OSS performance, the solution would be to provide flow-through data disaggregated by order type.

Bell Atlantic seeks to have the Commission roll back the clock and dispense with its last four orders on 271 applications, which addressed the need for nondiscriminatory access to OSS, particularly machine-to-machine interfaces providing full electronic flow-through where that is what the BOC enjoys for its orders. Despite incessant BOC requests for road maps and guidance, Bell Atlantic would now have the Commission toss out its prior rulings and hold that manual processing of orders – even where the BOC enjoys full electronic flow-through of its analogous orders – can satisfy the Act's nondiscrimination requirement. Bell Atlantic disregards the fact that manual processing inherently introduces additional expense and increased errors into the OSS process. The Commission thus was right to hold that nondiscriminatory access to OSS requires electronic flow-through where it is enjoyed by the BOC.

V. THE COMMISSION PROPERLY CONSTRUED BELLSOUTH'S POSITION ON COLLOCATION.

MCI WorldCom confirms (p. 8) that BellSouth's semantic objections notwithstanding, BellSouth has embraced collocation as the only means of providing access to network element combinations. As MCI WorldCom establishes, BellSouth has categorically rejected "recent change" and "direct access" and "will not seriously consider alternatives to collocation." CompTel and Sprint also point out that BellSouth proposed BFR (bona fide request) process for alternatives to collocation does not meet the Act's requirement. CompTel Opp. at 2-3; Sprint Opp. at 19-20. But, it is BellSouth's sister BOC, Ameritech, that makes the BOC position on methods of combining network elements abundantly clear. According to Ameritech, not only is collocation a method of combining network elements under the Act, it is the only method authorized by the Act. Ameritech Comments, pp. 22-23. Bell Atlantic does not raise any arguments in support of BellSouth's petition that were not considered by the Commission and rejected in the Order.[8] The Commission thus should reject BellSouth's request.

[8] Ironically, Bell Atlantic's position conflicts with that publicly espoused, if not practiced, by BellSouth, which contends that it does not limit CLECs to collocation for purposes of combining network elements. Indeed, BellSouth's petition seeks to reinforce this point with the Commission. To the extent Bell Atlantic seeks relief beyond that sought by BellSouth, it should have timely filed its own petition for reconsideration.

CONCLUSION

For all of the reasons set forth above, the Commission should grant AT&T's petition for reconsideration and/or clarification and deny BellSouth's petition.

Respectfully submitted,
AT&T CORP.

By Stephen C. Garavito

Mark C. Rosenblum
Stephen C. Garavito
Roy E. Hoffinger

Its Attorneys

295 N. Maple Avenue
Room 3252G1
Basking Ridge, NJ 07920
(908) 221-8100

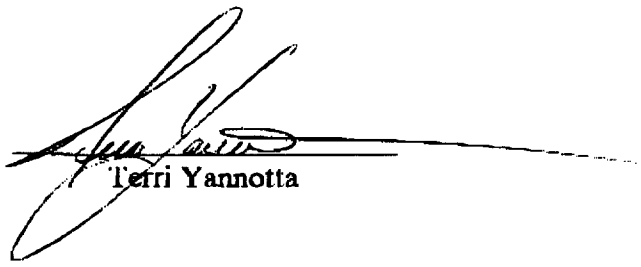
David W. Carpenter
Mark E. Haddad
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for AT&T Corp.

Dated: December 28, 1998

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 28th day of December, 1998, a copy of the foregoing "AT&T Corp. Reply To Oppositions and Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



Terri Yannotta

December 28, 1998

SERVICE LIST

Donald J. Russell*
David Smutney*
Luin Fitch*
Anu Seam*
Telecommunications Task Force
Antitrust Division
U.S. DEPARTMENT OF JUSTICE
1401 H Street, NW
Suite 800
Washington, DC 20005

Lawrence C. St. Blanc
Executive Secretary
LOUISIANA PUBLIC SERVICE COMMISSION
P.O. Box 91154
Baton Rouge, LA 70821-9154

Joel Klein
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530-001

James G. Harralson
28 Perimeter Center East
Atlanta, GA 30346
Counsel for BellSouth Long Distance

Charles R. Morgan
William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, NE
Atlanta, GA 30367

David G. Frolio
1133 21st Street, NW
Washington, DC 20036

Erwin G. Krasnow
VERNER, LIIPFERT, BERNHARD, McPHERSON & HAND
901 15th Street, NW
Washington, DC 20005
Counsel for BellSouth Corporation

Michael K. Kellogg
Austin C. Schlick
William B. Petersen
KELLOGG, HUBER, HANSEN, TODD & EVANS
1301 K Street, NW
Suite 1000 West
Washington, DC 20005
Counsel for BellSouth Corporation, BellSouth Telecommunications,Inc., and BellSouth Long Distance, Inc.

Jennings Bryant
Donald Vial
ALLIANCE FOR PUBLIC TECHNOLOGY
901 15th Street, NW
Suite 230
Washington, DC 20005

---

* Hand Delivered

Margaret H. Greene
R. Douglas Lackey
Stephen M. Klimacek
675 W. Peachtree Street, NE
Suite 4300
Atlanta, GA 30375
Counsel for BellSouth Telecommunications

Sheldon Elliot Steinbach
AMERICAN COUNCIL ON
EDUCATION
One Dupont Circle, NW
Washington, DC 20036

Kelly R. Welsh
John T. Lenahan
Gary L. Phillips
AMERITECH CORPORATION
30 South Wacker Drive
Chicago, IL 60606

Theodore A. Livingston
John E. Muench
Dennis G. Friedman
Christian F. Binnig
MAYER, BROWN & PLATT
190 South LaSalle Street
Chicago, IL 60603

Richard J. Metzger
Emily M. Williams
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES
888 17th Street, NW
Suite 900
Washington, DC 20006

Ronald Binz
Debra Berlyn
John Windhausen, Jr.
COMPETITION POLICY INSTITUTE
1156 15th Street, NW
Suite 520
Washington, DC 20005

John Windhausen, Jr.
3773 Cherry Creek North Drive
Suite 1050
Denver, CO 80209
Counsel for Competition Policy Institute

Genevieve Morelli
COMPETITIVE
TELECOMMUNICATIONS ASSOC.
1900 M Street, NW
Suite 800
Washington, DC 20036

Danny E. Adams
Steven A. Augustino
Melissa M. Smith
KELLEY, DRYE & WARREN
1200 19th Street, NW
Suite 500
Washington, DC 20036
Counsel for Competitive
Telecommunications Association

Brad E. Mutschelknaus
John J. Heitman
KELLEY, DRYE & WARREN
1200 19th Street, NW
Fifth Floor
Washington, DC 20036
Counsel for e.spire Communications

James M. Smith
EXCEL TELECOMMUNICATIONS
1133 Connecticut Avenue, NW
Suite 750
Washington, DC 20036

Dana Frix
SWIDLER, BERLIN, SHEREFF, FRIEDMAN
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for Excel Telecommunications

Janet S. Livengood
HYPERION TELECOMMUNICATIONS
DDI Plaza Two
500 Thomas Street
Suite 400
Bridgeville, PA 15017-2838

Douglas G. Bonner
SWIDLER, BERLIN, SHEREFF, FRIEDMAN
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for Hyperion Telecommunications

Jonathan E. Canis
Enrico C. Soriano
KELLEY, DRYE & WARREN
1200 19th Street, NW
Fifth Floor
Washington, DC 20036
Counsel for Intermedia Communications

Angela Ledford
KEEP AMERICA CONNECTED
P.O. Box 27911
Washington, DC 20005

Camille Failla Murphy
NATIONAL ASSOCIATION OF COMMISSIONS FOR WOMEN
8630 Fenton Street
Silver Spring, MD 20901

Tomasa C. Rosales
NATIONAL HISPANIC COUNCIL ON AGING
2713 Ontario Road, NW
Suite 200
Washington, DC 20009

Jordan Clark
UNITED HOMEOWNERS ASSOCIATION
655 15th Street, NW
Suite 460
Washington, DC 20005

Mary C. Albert
SWIDLER, BERLIN, SHEREFF, FRIEDMAN
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for KMC Telecom

Robert E. Litan
BROOKINGS INSTITUTION
1775 Massachusetts Avenue, NW
Washington, DC 20036

Roger G. Noll
Professor of Economics
STANFORD UNIVERSITY
Stanford, CA 94305

Jerome L. Epstein
Marc A. Goldman
Paul W. Cobb, Jr.
Thomas D. Amrine
Jeffrey I. Ryen
JENNER & BLOCK
601 13th Street, NW
Washington, DC 20005
Counsel for MCI Telecommunications

Mary L. Brown
Keith L. Seat
Karen T. Reidy
MCI TELECOMMUNICATIONS CORP.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Hamilton E. Russell III
STATE COMMUNICATIONS
200 North Main Street
Suite 303
Greenville, SC 29601

Robert V. Zener
SWIDLER, BERLIN, SHEREFF, FRIEDMAN
3000 K Street, NW
Suite 300
Washington, DC 20007
Counsel for State Communications

Charles C. Hunter
Catherine M. Hannan
HUNTER COMMUNICATIONS LAW GROUP
1620 I Street, NW
Suite 701
Washington, DC 20006
Counsel for Telecommunications Resellers Association

Brian Conboy
Thomas Jones
A. Renee Callahan
WILLKIE, FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Counsel for Time Warner Communications Holdings d/b/a Time Warner Telecom

Walter L. Purdy
TRIANGLE COALITION FOR SCIENCE AND TECHNOLOGY EDUCATION
5112 Berwyn Road
College Park, MD 20740-4129

John L. Traylor
US WEST COMMUNICATIONS
1020 19th Street, NW
Suite 700
Washington, DC 20036

Catherine R. Sloan
Richard L. Fruchterman III
Richard S. Whitt
WORLDCOM
1120 Connecticut Avenue, NW
Washington, DC 20036-3902

Andrew D. Lipman
SWIDLER, BERLIN, SHEREFF, FRIEDMAN
3000 K Street, NW
Suite 300
Washington, DC 20007-5116
Counsel for WorldCom

Laura H. Phillips
J.G. Harrington
Cécile G. Neuvens
DOW, LOHNES & ALBERTSON
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802
Counsel for Cox Communications

Kim Robert Scovill
OMNICALL
430 Woodruff Road
Suite 450
Greenville, SC 29607

Robert L. Hoggarth
Angela E. Giancarlo
PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Harold Mordkofsky
Susan J. Bahr
BLOOSTON, MORDKOFSKY, JACKSON & DICKENS
2120 L Street, NW
Suite 300
Washington, DC 20037
Counsel for Radiofone

Philip L. Verveer
Sue D. Blumenfeld
Thomas Jones
Gunnar Halley
Jay Angelo
Sophie Keefer
WILLKIE, FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Counsel for Sprint Communications

Leon M. Kestenbaum
SPRINT COMMUNICATIONS CO.
1850 M Street, NW
Washington, DC 20036